

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED
March 27, 2012

In the Matter of KLIMEK, Minors.

No. 305483
Wayne Circuit Court
Family Division
LC No. 09-490503-NA

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Before: BORRELLO, P.J., and BECKERING and GLEICHER, JJ.

PER CURIAM.

In these consolidated appeals, respondent-mother appeals by right the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(c)(i), (g), and (j), and respondent-father appeals by right the same order terminating his parental rights to the children under MCL 712A.19b(3)(c)(i) and (g). Respondents argue that the trial court erred in finding statutory grounds to terminate their parental rights and in determining that termination was in the children's best interests. For the reasons set forth in this opinion, we affirm the termination of both respondents' parental rights.

To terminate parental rights, the trial court must find that at least one of the statutory grounds for termination set forth in MCL 712A.19b(3) has been established by clear and convincing evidence. MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours*, 459 Mich 624, 632; 593 NW2d 520 (1999). We review for clear error a trial court's decision terminating parental rights. MCR 3.977(K); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). We give regard to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it. MCR 2.613(C); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989).

The trial court terminated respondent-mother's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which provide:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

We find that the trial court did not clearly err in finding that the Department of Human Services (DHS) established by clear and convincing evidence statutory grounds to terminate respondent-mother's parental rights under MCL 712A.19b(3)(c)(i) and (g). At the time of the adjudication, respondent-mother admitted that she did not have stable and suitable housing, she could not adequately care for the children, and she had been diagnosed with depression for which she had been seeing a psychiatrist and taking multiple prescription medications, although her Medicaid coverage had been cut off since the children had been taken away from her.¹ At the

¹ The petition for temporary custody alleged that respondent-mother had another child who was under guardianship; the minor children at issue were also previously under a guardianship, but were returned to respondent-mother's care seven months earlier; respondent mother was without stable, suitable housing; one of the minor children was taken to the police department by an unrelated person who had been caring for her for four days, and the minor child had been in the

time of the termination hearing almost 19 months later, respondent-mother's mental-health issues remained untreated, and she had not demonstrated an ability to maintain independent, suitable housing. In January 2010, shortly after the adjudication, she stopped seeing the psychiatrist who was treating her for bipolar disorder, severe anxiety, and depression, and she never told the psychiatrist about her substance-abuse history. She was not receiving treatment from a mental-health professional at the time of the termination hearing. She was also living with her boyfriend in a trailer and relying on him for rent money. Although she began to work full time in the month the termination hearing began, there was no evidence that she could maintain suitable housing and provide proper care for her children on her own for any significant length of time. During the time her children were in the care of relatives, she provided minimal money for their financial support. Even when her income increased, she did not provide any money for the children's care.

Further, respondent-mother's untreated substance abuse would have interfered with her ability to provide proper care for her children. Respondent-mother had a history of heroin use and was taking prescription medications containing opiates and amphetamines for pain, despite her doctor's recommendation that she stop taking this medication and participate in drug treatment. While the supplemental termination petition was pending, respondent-mother stopped submitting drug screens, which impacted her ability to visit the children. She was terminated from substance-abuse therapy for lack of progress. And, in-between the dates of the two termination hearings, she obtained a new prescription for Vicodin after visiting a hospital emergency room and again failing to inform the doctors of her substance-abuse history. Respondent-mother completely lacked insight regarding her substance-abuse issues. She admitted opiates had a calming effect on her but was unable to see how the prescription medications threatened her sobriety. Although respondent-mother argues that she was likely to defeat "her last obstacle, use of drugs related to pain management," in a reasonable amount of time, the evidence did not reflect such likelihood.

While respondent-mother argues that she substantially complied with her treatment plan because she had housing and employment, there was no evidence that her housing was suitable or that she could maintain employment for any length of time. Likewise, although she argues that she participated in parenting classes and counseling, there was no evidence that she benefited from the services provided to her. A parent must benefit from the services offered so that he or she can improve parenting skills to the point where the children would no longer be at risk in the parent's custody. *In re Gazella*, 264 Mich App 668, 676; 692 NW 2d 708 (2005), superseded by statute on other grounds in MCL 712A.19b(5).

Finally, respondent-mother argues that petitioner failed to help her requalify for Medicaid and, thus, affected her progress on the treatment plan. Although the evidence does not clearly indicate what medical benefits respondent-mother had access to throughout the entire case, she did not seek appropriate assistance for pain management or drug rehabilitation even when it was

care of another unrelated person for two days before that; respondent-mother had four previous unsubstantiated CPS claims involving domestic violence, substance abuse, the selling of drugs from the home, and physical abuse; respondent-mother reported that she had been diagnosed with depression; and respondent-mother had warrants for her arrest.

clear that she had access to medical care and substance abuse programs. Thus, termination of parental rights was proper under MCL 712A.19b(3)(c)(i) and (g).

Termination of respondent-mother's parental rights was also proper under MCL 712A.19b(3)(j). Respondent-mother argues that there was no evidence of physical abuse or that the children were ever harmed or in danger. However, given respondent-mother's untreated substance abuse and her lack of insight on the issue, problems which led to the children's removal in the first place, there was a reasonable likelihood that the children would be harmed if returned to her care.

The trial court terminated respondent-father's parental rights under MCL 712A.19b(3)(c)(i) and (g). Petitioner concedes that the trial court erred in terminating respondent-father's parental rights under MCL 712A.19b(3)(c)(i). The children were removed from the care of respondent-mother, and most of the issues involving respondent-father were not yet fully known at the time of the adjudication. However, an erroneous termination of parental rights under one statutory basis for termination can be harmless error if the court properly found another ground for termination. *In re Powers*, 244 Mich App 111, 118; 624 NW2d 472 (2000).

Termination of respondent-father's parental rights was proper under MCL 712A.19b(3)(g) because he was unable and unwilling to provide proper care for his children. Throughout this case, respondent-father demonstrated a lack of commitment toward his children. The children were under the trial court's jurisdiction for over one year before respondent-father showed any interest in them. He attended only eight of 20 possible visits, blaming construction traffic, travel time, and the caseworker for his unwillingness to regularly visit his children. Respondent-father enrolled in parenting classes but was removed from sessions for fighting with respondent-mother. Although he re-enrolled in a new set of parenting classes, he completed only four classes by the time of the termination hearing and still had ten more to complete. He also began participating in counseling only a few months before the termination hearing but failed to address his emotional issues. Respondent-father was unable to adopt appropriate emotionally expressive skills as evidenced by his interaction with the caseworker. He spoke to her harshly, called five or six times a day, and left messages containing profanity. Moreover, there was no evidence that respondent-father was ever involved with his children before the trial court's intervention or that he ever contributed toward their care and support. Respondent-father's failure to comply with his parent-agency agreement was evidence of his failure to provide proper care and custody of his children. See *In re JK*, 468 Mich at 214.

Respondent-father argues that he was not given a meaningful opportunity to plan for his children and that he was not provided a treatment plan until April 2011 because he had not come to court. Contrary to respondent-father's assertion, the evidence shows that the trial court provided him with a treatment plan in January 2010. His decision not to come to court hearings had no bearing on whether he could comply with the requirements of his treatment plan.

Once a statutory ground for termination has been established by clear and convincing evidence, if the trial court also finds from evidence on the whole record that termination is in the child's best interests, then the trial court is required to order termination of parental rights. MCL 712A.19b(5); *In re Trejo*, 462 Mich at 354. There is no specific burden on either party to present evidence of the children's best interests; rather, the trial court should weigh all evidence

available. *In re Trejo*, 462 Mich at 352-353. We review for clear error the trial court's decision regarding the children's best interests. *Id.* at 356-357.

With respect to respondent-mother, the trial court found that she clearly had a bond with her children. However, the record reveals that she failed to address her substance-abuse and mental-health issues, despite the fact that they kept her from reuniting with the children. Further, she had not demonstrated that she could provide proper housing or care for the children. The children deserve to have stability and permanency. See *In re VanDalen*, 293 Mich App 120; ___NW2d___ (2011) (finding termination to be in children's best interests where the children's foster home could provide them with continued stability and permanency), slip op at 11. With respect to respondent-father, the evidence showed that the children were under the court's jurisdiction for over one year before respondent-father showed any interest in the proceedings. He had been an absentee father leading up to the proceedings, showed a very limited commitment to his children throughout, and there was no discernable bond. Further, there was no evidence that he had suitable parenting skills or was able to provide care and a stable home for the children. Although respondent-father argues that the children's best interests are served if they are raised by their parent, he failed to explain how compromising the suitability of their relative care by maintaining his relationship with the children would serve their best interests. Respondent-father's assertions do not provide enough justification to maintain the relationship. Accordingly, the court did not clearly err in its best-interest determination and, thus, its decision to terminate respondents' parental rights.

Affirmed.

/s/ Stephen L. Borrello
/s/ Jane M. Beckering
/s/ Elizabeth L. Gleicher